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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/723,508 11/28/00 ANDERSON

G 680.0037USU

EXAMINER

HM22/0829

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VII, G	
ART UNIT	PAPER NUMBER

1619
DATE MAILED:

3
08/29/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/723,508	ANDERSON, GLEN T.	
	Examiner	Art Unit	
	Gina C Yu	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05-17-2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 6, 12, 13, and 14 are rejected because the term "substantially" renders the claim vague and indefinite. The term refers to a relative degree and the scope of the claim is not clear.

Claims 2-6 and 8-10 are rejected because their reference to the limitation on particle size distribution recited in claim 1 renders the claims confusing. Claim 1 requires "a particle size distribution of about 24 microns". Claims 2-6 and 8-10 are clearly inconsistent with that requirement. They all require particle size distribution significantly less than "about 24 microns".

Claim 16 is rejected because the term "secondary component" renders the claim vague. Claim 1, which is the base claim for claim 16, already discloses three components.

Claim 17 is rejected because the usage of the term "vehicle" in the claim gives a meaning repugnant to the usual meaning of that term. While the accepted meaning of the term in the art is an inactive substance with which an active component is blended

to make it easier to apply, the term in the instant case is used to mean both the inactive substance and articles, such as "pencil", "patch", "stick", and "tape".

Claim 17 is also rejected because the meaning of the terms "essence" and "stick" is not apparent from the prior art or from the specification, which renders the claim vague and indefinite.

The remaining claims are rejected as depending on indefinite base claims.

Claim Rejections - 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as obvious over Rouquet et al. (U.S. Pat. No. 6,258,345 B1) in view of Ishida et al. (JP 2000619342 A2) and its abstract.

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. Nylon or polydimethylsiloxane particles are used, which meets claim 14. See col. 2, lines 37 – 54. Claim 16 is met by the disclosure of the additional

ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples. The reference lacks an explicit disclosure of the particle size distribution of the spherical particles.

Ishida et al. describes solid powder cosmetic composition comprising metal soap fine particles whose average particle size and particle size distribution are specified. See abstract; Tables and Diagrams on p. 4 – p.8. The abstract teaches that the long-lasting cosmetic effect and wrinkle-masking effect with specified particle size distribution are disclosed. The use of nylon powder, talc, sericite, and mica is also disclosed.

Given the general teaching of the spherical polymeric particles in Rouquet et al. it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to the prior art, such as Ishida et al., for specific teaching of the particle size distribution because of the expectation to have successfully produced cosmetic composition with long lasting and wrinkle-masking effect.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-305-3593.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. Any inquiry of a general

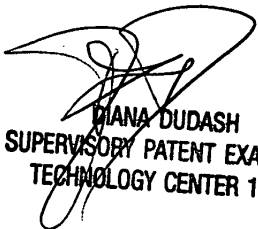
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nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
August 27, 2001



DIANA DUDASH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600